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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,689	07/03/2003	Eric Chalendar	D-7871	7323

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MeadWestvaco Corporation  
Law Department  
4850D North Church Lane  
Smyrna, GA 30080

EXAMINER
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HARMON, CHRISTOPHER R

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/613,689

Applicant(s)

CHALENDAR ET AL.

Examiner

Christopher R. Harmon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2006.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 19-53 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 19-53 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. As noted in the previous action of 10/31/05, the claim for priority has not been perfected.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the curvilinear path of the reciprocating member must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

3. Claims 19-53 are objected to because of the following informalities: the second and third directions of travel are the same. Referring to the two directions as separate elements usually creates an assumption that they are in fact two separate directions. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 19-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitations “one of said ones of the packaging material whereby...” (claim 19, line 12+; “one of said continuous sequence of ones” claim 37, line 15+ each are so displaced from the term “receiving” that the recitation of the packaging material accelerator is extremely confusing. Furthermore, the language suggests that only one packaging material product is acted upon by the accelerator.

***Claim Rejections - 35 USC § 102***

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6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless – (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 19-24, 26, 28-29, 31-33, 37-41, 43, 45-46, and 48-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Ganz (US 3,848,519).

Ganz discloses an apparatus for packaging an array comprising article conveyor 12; packaging material conveyor 14 for conveying packaging material in a perpendicular direction (downward) to the article conveyance direction; packaging material accelerators 28L and 28R adapted and synchronized to receive the individual packaging materials from conveyor 14 and place over array of bottles b on conveyor 12; compression mechanism 106; control system/drive mechanism that synchronizes the conveyors; see figure 1. The packaging materials have cells for holding articles b; see figure 15.

The process is continuous therefore erecting elements 30 disposed adjacent conveyor 14 are adapted for erecting cells during packaging material conveyance by packaging material conveyor 14. Erecting elements include reciprocating element 110 which engages portion km of the packaging and travels on a curvilinear path. This path is considered both circular and oval shaped; see figure 1.

Regarding claims 26 and 43, packaging material conveyor 14 is positioned in an overlapping configuration with packaging material accelerator 28.

Regarding claims 28 and 45, note that while features of an apparatus may be recited either structurally or functionally, claims directed towards an apparatus must be

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distinguished from the prior art in terms of structure rather than function. See *In re Schreiber*, 128 F.3d 1473-78, 44 USPQ2d 1429-32 (Fed.Cir. 1997) and *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed.Cir. 1990). The velocities specified are more appropriate for a process claim. The examiner takes the position that the separate assemblies of the invention to Ganz are fully capable of being run at different velocities if desired.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 25 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ganz (US 3,848,519) in view of Ford (US 5,626,002).

Ganz does not directly disclose an adhesive mechanism but rather an interlocking tab construction. Ford discloses both the use of adhesive and interlocking tab and hole construction for securing panels of carrier packaging materials; see column 2, first paragraph. It would have been obvious to one of ordinary skill in the art to include an adhesive applicator as taught by Ford in the invention to Ganz for securing panel members during the erection procedure.

9. Claims 27, 30, 44 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ganz (US 3,848,519).

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Ganz does not directly disclose the packaging material conveyor with two opposing endless chains but rather only one carrying a series of lugs 20 for engaging the packaging material. However, it would have been obvious to one of ordinary skill in the art to provide two endless chains (one for each tooth in lug 20) since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

Ganz discloses endless chains 34 having a working reach terminating proximate article conveyor 12; see figure 1. The examiner takes Official Notice that endless belts and roller/pulleys are well known substitutes for endless chains. It would have been obvious to one of ordinary skill in the art at the time of the invention to replace the endless chains of Ganz with endless belts for carrying the engaging elements of the packaging material accelerator.

10. Claims 34-36 and 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ganz (US 3,848,519) in view of Buckingham et al. (US 4,237,676).

Ganz does not directly disclose a packaging material detector or an article array position detector however in a similar automated packaging device Buckingham et al. disclose packaging arrays of bottles using a control system comprising packaging material detector/photocell P1; detector head/array detector (not shown); see column 10, lines 51+. These are run by a control system/controller as are the conveyors of Ganz. Whether or not Buckingham et al. disclose a central processor is moot due to

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Applicant's previous admission that central processors and input means are well known devices in this environment; see Non-Final Rejection of 10/31/05.

It would have been obvious to one of ordinary skill in the art at the time of the invention to include the control system with sensors of Buckingham et al. in the invention to Ganz for increased precision and elimination of defective packages.

### ***Response to Arguments***

11. Applicant's arguments with respect to all claims have been considered but are moot in view of the new ground(s) of rejection.

Regarding the admission due to failure to traverse, (Applicant's admitted prior art) the arguments are untimely. Furthermore, Applicant still has yet to present an argument discussing **why the noticed fact is not considered to be common knowledge or well-known in the art**. In order to adequately traverse such a finding (common knowledge), an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See MPEP 2144.03(c) and also Chevenard, 139 F.2d at 713, 60 USPQ at 241.

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

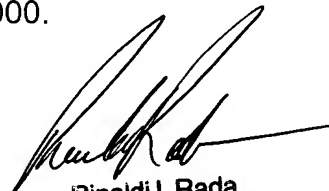
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Friday from 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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